



Sen. John M. Sullivan

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09600HB3217sam002

LRB096 06230 ASK 44154 a

1 AMENDMENT TO HOUSE BILL 3217

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3217, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Clean Coal FutureGen for Illinois Act is  
6 amended by changing Sections 5, 10, 15, 20, 23, 25, 30, 50, and  
7 998 as follows:

8 (20 ILCS 1107/5)

9 (Section scheduled to be repealed on December 31, 2010)

10 Sec. 5. Purpose. Recognizing that the FutureGen Project is  
11 a first-of-a-kind research project to permanently sequester  
12 underground captured CO2 ~~carbon-dioxide~~ emissions from: (1) a  
13 coal-fueled power plant that uses as its primary fuel source  
14 high volatile bituminous rank coal with greater than 1.7 pounds  
15 of sulfur per million btu content or (2) other approved and  
16 permitted captured CO2 sources in the State of Illinois, and

1 that such a project would have benefits to the economy and  
2 environment of Illinois, the purpose of this Act is to provide  
3 the FutureGen Alliance with adequate liability protection and  
4 permitting certainty to facilitate the siting of the FutureGen  
5 Project in the State of Illinois, to provide to the State of  
6 Illinois certain financial benefits from environmental  
7 attributes for the Project, and to help secure over \$1 billion  
8 in federal funding for the Project.

9 (Source: P.A. 95-18, eff. 7-30-07.)

10 (20 ILCS 1107/10)

11 (Section scheduled to be repealed on December 31, 2010)

12 Sec. 10. Legislative findings. The General Assembly finds  
13 and determines that:

14 (1) human-induced greenhouse gas emissions have been  
15 identified as contributing to global warming, the effects  
16 of which pose a threat to public health and safety and the  
17 economy of the State of Illinois;

18 (2) in order to meet the energy needs of the State of  
19 Illinois, keep its economy strong and protect the  
20 environment while reducing its contribution to  
21 human-induced greenhouse gas emissions, the State of  
22 Illinois must be a leader in developing new low-carbon  
23 technologies;

24 (3) carbon capture and storage is a low-carbon  
25 technology that involves capturing the captured CO2 ~~carbon~~

1 ~~dioxide~~ from fossil fuel energy electric ~~and hydrogen~~  
2 generating units and other industrial facilities and  
3 injecting it into secure geologic strata for permanent  
4 storage;

5 (4) the FutureGen Project is a public-private  
6 partnership between the Federal Department of Energy and  
7 the FutureGen Alliance that proposes to use this new  
8 technology as part of a plan to transport and store  
9 captured CO2 from a coal-fueled power plant that uses as  
10 its primary fuel source high-volatile bituminous rank coal  
11 with greater than 1.7 pounds of sulfur per million btu  
12 content and other captured CO2 sources that are approved by  
13 the appropriate State of Illinois agency and permitted in  
14 the State of Illinois ~~build and operate a near zero~~  
15 ~~emission coal fueled power plant;~~

16 (5) the FutureGen Project will help ensure the  
17 long-term viability of Illinois Basin coal as a major  
18 energy source in the State of Illinois and throughout the  
19 nation and represents a significant step in the State of  
20 Illinois' efforts to become a self-sufficient, clean  
21 energy producer;

22 (6) the FutureGen Project provides an opportunity for  
23 the State of Illinois to partner with the Federal  
24 Department of Energy and the FutureGen Alliance in the  
25 development of these innovative clean-coal technologies;

26 (7) the FutureGen Project will make the State of

1 Illinois a center for developing and refining clean coal  
2 technology, ~~hydrogen production~~ and carbon capture and  
3 storage, and will result in the development of new  
4 technologies designed to improve the efficiency of the  
5 energy industry that will be replicated world wide;

6 (8) the FutureGen Project is an important coal  
7 development and conversion project that will create jobs in  
8 the State of Illinois during the construction and  
9 operational phases, contribute to the overall economy of  
10 the State of Illinois and help reinvigorate the Illinois  
11 Basin coal industry; and

12 (9) the FutureGen Project and the property necessary  
13 for the FutureGen Project serve a substantial public  
14 purpose as its advanced clean-coal ~~coal gasification,~~  
15 electricity generation, ~~hydrogen production,~~ advanced  
16 emissions control and carbon capture and storage  
17 technologies will benefit the citizens of the State of  
18 Illinois.

19 (Source: P.A. 95-18, eff. 7-30-07.)

20 (20 ILCS 1107/15)

21 (Section scheduled to be repealed on December 31, 2010)

22 Sec. 15. Definitions. For the purposes of this Act:

23 "Agency" means the Illinois Environmental Protection  
24 Agency.

25 "Captured CO2" means CO2 and other trace chemical

1 constituents approved by the Agency for injection into the  
2 Mount Simon Formation.

3 "Carbon capture and storage" means the process of  
4 collecting captured CO2 ~~capturing CO2 and other chemical~~  
5 ~~constituents~~ from coal combustion by-products for the purpose  
6 of injecting and storing the captured CO2 ~~gas~~ for permanent  
7 storage.

8 "Carbon dioxide" or "CO2" means a colorless, odorless gas  
9 in the form of one carbon and 2 oxygen atoms that is the  
10 principal greenhouse gas.

11 "Department" means the Department of Commerce and Economic  
12 Opportunity.

13 "Director" means the Director of Commerce and Economic  
14 Opportunity.

15 "Federal Department" means the federal Department of  
16 Energy.

17 "FutureGen Alliance" is a 501(c)(3) non-profit consortium  
18 of coal and energy producers created to benefit the public  
19 interest and the interest of science through the research,  
20 development, and demonstration of near zero-emission coal  
21 technology, with the cooperation of the Federal Department  
22 ~~that, as of the effective date of this Act, includes American~~  
23 ~~Electric Power, Anglo American plc, BHP Billiton, E. ON US,~~  
24 ~~China Huaneng Group, CONSOL Energy, Foundation Coal, Kennecott~~  
25 ~~Energy, Peabody Energy, PPL Corporation, Rio Tinto Energy~~  
26 ~~American, Southern Company, and Xstrata Coal.~~

1 "FutureGen Project" means the public-private partnership  
2 between the Federal Department and the FutureGen Alliance that  
3 will control captured CO2 and will construct and operate a  
4 pipeline and storage field for captured CO2 ~~coal-fueled power~~  
5 ~~plant utilizing state of the art clean coal technology and~~  
6 ~~carbon capture and storage. Two locations in Illinois, Tuscola~~  
7 ~~and Mattoon, are under consideration for the FutureGen Project.~~  
8 ~~These are the only locations eligible for benefits under this~~  
9 ~~Act.~~

10 "Mount Simon Formation" means the deep sandstone reservoir  
11 into which the sequestered CO2 ~~gas~~ is to be injected at a depth  
12 greater than 3,500 feet ~~depths generally ranging between 5,500~~  
13 ~~and 8,500 feet~~ below ground surface and that is bounded by the  
14 granitic basement below and the Eau Claire Shale above.

15 "Operator" means the FutureGen Alliance and its member  
16 companies, including their parent companies, subsidiaries,  
17 affiliates, directors, officers, employees, and agents, or a  
18 not-for-profit successor-in-interest approved by the  
19 Department.

20 "Post-injection" means after the captured CO2 ~~gas~~ has been  
21 successfully injected into the wellhead at the point at which  
22 the captured CO2 ~~gas~~ is transferred into the wellbore for  
23 carbon sequestration and storage into the Mount Simon  
24 Formation.

25 "Pre-injection" means all activities and occurrences prior  
26 to successful delivery into the wellhead at the point at which

1 the captured CO2 ~~gas~~ is transferred into the wellbore for  
2 carbon sequestration and storage into the Mount Simon  
3 Formation, including but not limited to, the operation of the  
4 FutureGen Project.

5 "Public liability" means any civil legal liability arising  
6 out of or resulting from the storage, escape, release, or  
7 migration of the post-injection sequestered CO2 ~~gas~~ that was  
8 injected by the Operator and for which title is transferred to  
9 the State pursuant to Section 20 of this Act ~~during the~~  
10 ~~operation of the FutureGen Project by the FutureGen Alliance.~~

11 The term "public liability", however, does not include any  
12 legal liability arising out of or resulting from the  
13 construction, operation, or other pre-injection activity of  
14 the Operator or any other third party.

15 "Public liability action" or "action" means a written  
16 demand, lawsuit, or claim from any third party received by the  
17 Operator seeking a remedy or alleging liability on behalf of  
18 Operator resulting from any public liability.

19 "Sequestered CO2 ~~gas~~" means the captured CO2 ~~and other~~  
20 ~~chemical constituents~~ from the FutureGen Project operations  
21 that is ~~are~~ injected into the Mount Simon Formation by the  
22 Operator.

23 (Source: P.A. 95-18, eff. 7-30-07.)

24 (20 ILCS 1107/20)

25 (Section scheduled to be repealed on December 31, 2010)

1           Sec. 20. Title to sequestered CO2 ~~gas~~. If the FutureGen  
2 Alliance identifies a designated Project ~~locates at either the~~  
3 ~~Tuscola or Mattoon~~ site in the State of Illinois suitable for  
4 injection of captured CO2 into the Mount Simon Formation, then  
5 ~~the FutureGen Alliance agrees that~~ the Operator shall transfer  
6 and convey and the State of Illinois shall accept and receive,  
7 with no payment due from the State of Illinois, all rights,  
8 title, and interest in and to and any liabilities associated  
9 with the sequestered CO2 ~~gas~~, including any current or future  
10 environmental benefits, marketing claims, tradable credits,  
11 emissions allocations or offsets (voluntary or compliance  
12 based) associated therewith, upon such gas reaching the status  
13 of post-injection, which shall be verified by the Agency or  
14 other designated State of Illinois agency. The Operator or  
15 owner of the captured CO2 to be sequestered shall retain all  
16 rights, title, and interest in and to and any liabilities  
17 associated with the pre-injection captured CO2. In cooperation  
18 with and at the reasonable cost of the Operator, the  
19 ~~sequestered gas. The~~ Illinois State Geological Survey of the  
20 University of Illinois shall monitor, measure, and verify the  
21 permanent status of sequestered CO2 ~~carbon dioxide and~~  
22 ~~co-sequestered gases in which the State has acquired the right,~~  
23 ~~title, and interest under this Section.~~

24           (Source: P.A. 95-18, eff. 7-30-07; 95-728, eff. 7-1-08 - See  
25           Sec. 999.)

1 (20 ILCS 1107/23)

2 (Section scheduled to be repealed on December 31, 2010)

3 Sec. 23. Sequestered CO2 ~~gas~~. The State of Illinois may not  
4 intentionally remove sequestered CO2 ~~gas~~ unless the removal is  
5 for the purpose of research and development.

6 (Source: P.A. 95-18, eff. 7-30-07.)

7 (20 ILCS 1107/25)

8 (Section scheduled to be repealed on December 31, 2010)

9 Sec. 25. Insurance against qualified losses.

10 (a) The Department shall procure an insurance policy from a  
11 private insurance carrier or carriers, if and to the extent  
12 that such a policy is available, that insures the Operator  
13 against any qualified loss stemming from a public liability  
14 action. The policy must be procured in accordance with the  
15 provisions of the Procurement Code.

16 (b) Pursuant to Section 30 of this Act, the State shall  
17 indemnify the Operator against any qualified loss stemming from  
18 a public liability action to the extent that the qualified loss  
19 is not covered under an insurance policy under subsection (a)  
20 of this Section.

21 (c) The Department shall pay any insurance premium,  
22 deductible, or liability under subsections (a) or (b) from  
23 appropriations by the General Assembly for that purpose. It is  
24 the intent of this Act that, to the extent practical, any  
25 unexpended balance of the proceeds from the sale of emission

1 reduction rights or tradable credits to which the State has  
2 title under Section 20 should be used for the purposes of this  
3 subsection (c).

4 (d) If the FutureGen Alliance identifies a designated site  
5 in ~~locates the FutureGen Project at either the Mattoon or~~  
6 ~~Fuscola site in the State of Illinois~~ suitable for injection of  
7 captured CO2 into the Mount Simon Formation, then the  
8 Department shall be authorized to contract with the FutureGen  
9 Alliance, under terms not inconsistent with this Act, in order  
10 to define the rights and obligations of the FutureGen Alliance  
11 and the Department, including but not limited to, the insurance  
12 and indemnification obligations under Sections 25 and 30 of  
13 this Act.

14 (e) If federal indemnification covers all or a portion of  
15 the obligations assumed by the State under Section 25 of this  
16 Act, such State obligations shall be reduced in proportion to  
17 the federal indemnification and be considered subordinated to  
18 any federal indemnification.

19 (g) For the purpose of this Section, "qualified loss" means  
20 a loss by the Operator stemming from a public liability action  
21 other than those losses arising out of or relating to:

22 (1) the intentional or willful misconduct of the  
23 Operator ~~in its operation of the FutureGen Project;~~

24 (2) the failure of the Operator to comply with any  
25 applicable law, rule, regulation, or other requirement  
26 established by the Federal Department, Agency, or State of

1 Illinois for the carbon capture and storage of the  
2 sequestered CO2 ~~gas~~, including any limitations on the  
3 chemical composition of any sequestered CO2 ~~gas~~; or

4 (3) any ~~the~~ pre-injection activities ~~operation~~ of the  
5 Operator ~~FutureGen Project~~.

6 (Source: P.A. 95-18, eff. 7-30-07.)

7 (20 ILCS 1107/30)

8 (Section scheduled to be repealed on December 31, 2010)

9 Sec. 30. Indemnification. Notwithstanding any law to the  
10 contrary, the State of Illinois shall indemnify, hold harmless,  
11 defend, and release the Operator from and against any public  
12 liability action asserted against the Operator, subject to the  
13 following terms and conditions:

14 (a) The obligation of the State of Illinois to indemnify  
15 the Operator does not extend to any public liability arising  
16 out of or relating to:

17 (1) the intentional or willful misconduct of the  
18 Operator ~~in its operation of the FutureGen Project~~;

19 (2) the failure of the Operator to comply with any  
20 applicable law, rule, regulation, or other requirement  
21 established by the Federal Department, Agency, or State of  
22 Illinois for the carbon capture and storage of the  
23 sequestered CO2 ~~gas~~, including any limitations on the  
24 chemical composition of any sequestered CO2 ~~gas~~;

25 (3) any ~~the~~ pre-injection activities ~~operation~~ of the

1        Operator FutureGen Project; or

2            (4) a qualified loss to the extent that it is paid  
3        under an insurance policy under subsection (a) of Section  
4        25 of this Act.

5            (b) The indemnification obligations of the State of  
6        Illinois assumed under Section 30 of this Act shall be reduced  
7        in proportion and be subordinated to any federal  
8        indemnification that covers all or a portion of the State's  
9        obligations.

10        (Source: P.A. 95-18, eff. 7-30-07.)

11            (20 ILCS 1107/50)

12            (Section scheduled to be repealed on December 31, 2010)

13        Sec. 50. Jurisdiction. The Court of Claims has jurisdiction  
14        concerning any public liability action arising under this Act  
15        or arising from the operation of the FutureGen Project, except  
16        that a public liability action may be brought in the circuit  
17        court if the cause of action is one of personal injury or  
18        wrongful death and the injury or death was proximately caused  
19        by the storage, escape, release, or migration of the  
20        post-injection sequestered CO2 gas that was injected during the  
21        operation of the FutureGen Project by the FutureGen Alliance,  
22        and the circuit court is hereby granted jurisdiction over these  
23        matters. The jurisdiction over civil, administrative, or other  
24        legal processes is not, otherwise, affected by this Act.

25        (Source: P.A. 95-18, eff. 7-30-07.)

1 (20 ILCS 1107/998)

2 (Section scheduled to be repealed on December 31, 2010)

3 Sec. 998. Repeal. This Act is repealed on December 31, 2015  
4 ~~2010~~ unless the FutureGen Project has been located at a  
5 designated ~~either the Mattoon or Tuscola~~ site in Illinois.

6 (Source: P.A. 95-18, eff. 7-30-07.)

7 (20 ILCS 1107/43 rep.)

8 Section 10. The Clean Coal FutureGen for Illinois Act is  
9 amended by repealing Section 43.

10 Section 99. Effective date. This Act takes effect upon  
11 becoming law.".